IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 23254 of 2007(R)

PETITIONER:

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1. DR.BABU T. JOSE, S/O. T.J.VARKEY,
   AGED 61 YEARS, R/AT 92 VIDHYA NAGAR,
   COCHIN UNIVERSITY P.O., KOCHI-682 022.

2. P.J.LEELA, W/O. DR. BABU T. JOSE, AGED
   54 YEARS, R/AT 92 VIDHYA NAGAR, COCHIN UNIVERSITY
   P.O., KOCHI-682 022.

3. JOSEPH PHILIP, S/O. T.A.PHILIP,
   AGED 52 YEARS, R/AT 92 MANAYATH HOUSE,
   PADAMUGHAL, KOCHI-682 020.

4. BAVA JOSEPH, W/O. JOSEPH PHILIP,
   AGED 42 YEARS, R/AT 92 MANAYATH HOUSE,
   PADAMUGHAL, KOCHI- 682 020.

5. M.R.DEVADAS, S/O. M.A.RAGHAVAN, AGED 58
   YEARS,R/AT MADAMPIKATTY HOUSE, GOKULAM, KAKKANAD,
   KOCHI-682 021.

6. P.B.USHA, W/O. M.R.DEVADAS, AGED 52
   YEARS, R/AT MADAMPIKATTU HOUSE, GOKULAM, KAKKANAD,

BY ADV. SRI.TOM JOSE
SMT.GEETHA JOB(OZHUKAYIL)

RESPONDENTS:

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1. THE FEDERAL BANK LTD., REPRESENTED BY
   ITS GENERAL MANAGER, REGISTERED OFFICE,ALUVA,
   ERNAKULAM DISTRICT.

2. THE ASSISTANT GENERAL MANAGER,
   THE FEDERAL BANK LTD,ERNAKULAM NORTH BRANCH,
   BANERJI ROAD, ERNAKULAM, KOCHI-682 018.

3. THE CHIEF MANAGER, THE FEDERAL BANK LTD
   ERNAKULAM NORTH BRANCH BANERJI ROAD,
   ERNAKULAM, KOCHI-682 018.

4. THE RESERVE BANK OF INDIA, R/BY ITS
   CHAIRMAN, DEPARTMENT OF BANKING OPERATION AND
   DEVELOPMENTS,CENTRAL OFFICE, WORLD TRADE CENTRE,
   1, CUFFE PARADE, COLABA, MUMBAI- 400 005.

R1 TO R3 BY ADV. SRI.K.C.ELDHO
R4 BY ADV. SRI. JACOB VARGHESE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF PHOTOGRAPHS SHOWING THE DROUGHT HIT AND DRIED UP CASURINA PLANTATIONS OF THE PETITIONERS.

EXT.P2 TRUE COPY OF NEWSPAPER REPORT PUBLISHED IN THE HINDU DAILY DATED 23.4.2002

EXT.P3 (a) TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF FIRST PETITIONER.

EXT.P3(b) TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF 2ND PETITIONER.

EXT.P3(c) TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF 2ND PETITIONER.

EXT.P3(d) TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF 3RD PETITIONER.

EXT.P3(e) TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF 4TH PETITIONER.

EXT.P3(f) TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF 6TH PETITIONER.

EXT.P3(g) TRUE COPY OF THE CERTIFICATE ISSUED IN FAVOUR OF 6TH PETITIONER.

EXT.P4 TRUE COPY OF THE REPRESENTATION DATED 19.11.2001 PREFERRED BY THE 1ST PETITIONER BEFORE THE 1ST TO 3RD RESPONDENTS-BANK

EXT.P5 TRUE COPY OF THE REPRESENTATION DATED 19.2.2004 SIGNED BY ALL THE PETITIONERS AND CO-OBLIGANTS.

EXT.P6 TRUE COPY OF THE REPRESENTATION DATED 16.5.2005 PREFERRED BY PETITIONERS 5 AND 6 ON BEHALF OF OTHER PETITIONERS.

EXT.P7 TRUE COPY OF THE REPRESENTATION DATED 16.9.2005 PREFERRED BY THE PETITIONERS.

EXT.P8(a) TRUE COPY OF THE LETTER DATED 18.1.2006 ISSUED BY THE RESPONDENTS TO THE 1ST PETITIONER CLAIMING OF ARREARS.

EXT.P8(b) TRUE COPY OF THE LETTER DATED 18.1.2006 ISSUED BY THE RESPONDENTS TO THE 2ND PETITIONER CLAIMING OF ARREARS.

EXT.P8(c) TRUE COPY OF THE LETTER DATED 18.1.2006 ISSUED BY THE RESPONDENTS TO THE 3RD PETITIONER CLAIMING OF ARREARS.

EXT.P8(d) TRUE COPY OF THE LETTER DATED 19.1.2006 ISSUED BY THE RESPONDENTS TO THE 4TH PETITIONER CLAIMING OF ARREARS.

EXT.P8(e) TRUE COPY OF THE LETTER DATED 19.1.2006 ISSUED BY THE RESPONDENTS TO THE 5TH PETITIONER CLAIMING OF ARREARS.

EXT.P8(f) TRUE COPY OF THE LETTER DATED 19.1.2006 ISSUED BY THE RESPONDENTS TO THE 6TH PETITIONER CLAIMING OF ARREARS.

EXT.P9 TRUE COPY OF THE REPLY NOTICE ISSUED TO RESPONDENTS 1 AND 2 BY PETITIONERS.

EXT.P10(a) TRUE COPY OF THE LAWYER NSOTICE DATED 21.3.2006 ISSUED BY THE FIRST RESPONDENT BANK TO THE PETITIONERS.

EXT.P10(b) TRUE COPY OF THE LAWYER NOTICE DATED 28.3.2006 ISSUED BY THE FIRST RESPONDENT-BANK TO THE PETITIONERS.

EXT.P10(c) TRUE COPY OF THE LAWYER NOTICE DATED 27.3.2006 ISSUED BY THE FIRST RESPONDENT BANK TO THE PETITIONERS.

EXT.P10(d) TRUE COPY OF THE LAWYER NSOTICE DATED 27.3.2006 ISSUED BY THE FIRST RESPONDENT BANK TO THE PETITIONERS.

EXT.P10(e) TRUE COPY OF THE LAWYER NOTICE DATED 28.3.2006 ISSUED BY THE FIRST RESPONDENT BANK TO THE PETITIONERS.

EXT.P10(f) TRUE COPY OF THE LAWYER NOTICE DATED 29.3.2006 ISSUED BY THE FIRST RESPONDENT BANK TO THE PETITIONERS.

EXT.P11 TRUE COPY OF THE STATUTORY NOTICE DATED 7.4.2006 ISSUED ON BEHALF OF THE PETITIONERS AND CO-OBLIGANTS

EXT.P12 TRUE COPY OF THE REPRESENTATION DATED 20.3.2007 PREFERRED BEFORE THE HON'BLE RESERVE BVANK OF INDIA

EXT.P13 TRUE COPY OF THE LETTER DATED 27.4.2007 ISSUED BY THE4TH RESPONDENT, RESERVE BANK OF INDIA.

EXT.P14 TRUE COPY OF THE CIRCULAR ENCLOSED ALONG WITH EXT.P13 LETTER.

EXT.P15 TRUE COPY OF THE NOTICE DATED 4.6.2007 ISSUED TO THE PETITIONERS.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 23254 OF 2007

Dated this the 17th day of August, 2007

JUDGMENT

Heard counsel for the petitioners and standing counsel appearing for the first respondent-Bank. Petitioners are challenging proceedings initiated under Securitisation Act for recovery loans stated to be agricultural loans availed by the petitioners. Even though counsel for the petitioners contended that recurring crop failure led to arrears and consequentially the prayer is mainly for direction to the first respondent to grant OTS benefit and lower rate of interest available to agricultural loans under the RBI guidelines, counsel for the first respondent-Bank referred to the statement filed and submitted that the present proceedings initiated under the Securitisation Act pertain to personal loan availed by petitioners 5 and 6 against security of house property. Personal loan availed by petitioners 5 and 6 obviously are not agricultural loans and therefore securitisation proceedings are maintainable. There is no scope for interference by this Court in writ proceedings because petitioners 5 and 6 have right of appeal against

decision taken by the Bank. So far as the agricultural loans availed by petitioners together of which will come to Rs. 1.414 crores, standing counsel for the first respondent Bank contended that the rate of interest charged periodically is based on fluctuating rate in terms of RBI guidelines. According to him, interest, that is below 10% for agricultural loans, is available only for small loans, that is loan below Rs. 3 lakhs and not for big loans availed by the petitioners. In the circumstances, I do not think there is any scope for this Court to entertain the Writ Petition in the matter. If petitioners approach the first respondent with any reasonable terms for settlement, I am sure the Bank will show leniency and will even consider reduction of contract rate of interest as the rate of interest applied ranges from 14% to 19.38%. In the circumstances, petitioners are directed to suggest practical proposal for settlement of liability and inform the Bank about the time frame within which they will make payment exclusive of incentives to be granted by the bank. If petitioners put forward any concrete proposal there will be direction to the first respondent to consider the same and grant reasonable incentives. W.P. is accordingly

closed leaving freedom to the petitioners to approach the Bank for settlement of liability and on failure the Bank is free to proceed for recovery in accordance with law.

(C.N.RAMACHANDRAN NAIR)
Judge